

Message Text

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INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-05 H-01 INR-10
L-03 NSAE-00 PA-01 SP-02 SS-15 NSCE-00 SSO-00
ICAE-00 INRE-00 IO-13 ACDA-12 TRSE-00 MCT-01 /076 W
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O 081733Z MAY 78
FM AMEMBASSY BONN
TO SECSTATE WASHDC IMMEDIATE 8333
USMISSION USBERLIN IMMEDIATE

C O N F I D E N T I A L SECTION 01 OF 02 BONN 08474

E.O. 11652: GDS
TAGS: PGOV, BQG, AKB, PORS
SUBJECT: REQUEST TO PERMIT ARMING OF PROSECUTORS AND
JUDGES AT LORENZ KIDNAPPING TRIAL IN BERLIN

REFS: (A) USBER 1065
(B) USBER 934
(C) BONN 6169

BEGIN SUMMARY: WE AGREE WITH USBER THAT THE JUDGES AND
PROSECUTORS ARE IN PARTICULAR DANGER AND, BARRING SOME
INSURMOUNTABLE LEGAL OBJECTION, BELIEVE THAT A WAY SHOULD
BE FOUND FOR THEM TO BE ABLE TO CARRY ARMS. IT APPEARS
THAT THE REFERENCE IN ACC ORDER NO. 2 TO AUTHORITIES
WOULD PERMIT THE ALLIES TO ALLOW THEM TO BE ARMED. UN-
LESS USBER STRONGLY DISAGREES OR UNLESS INSTRUCTED TO
THE CONTRARY BY THE DEPARTMENT, WE WILL SEEK TO DISCUSS
THIS WITH THE FRENCH AND BRITISH BONN GROUP REPS LATER
THIS WEEK IN THE HOPE THAT THE FRENCH IN BONN ARE MORE
AMENABLE TO PERSUASION THAN THEIR COUNTERPARTS IN BERLIN.
END SUMMARY

1. THE FRG REP (VON RICHTHOFEN) RETURNED TO THE SUBJECT
AT THE MAY 2 BONN GROUP MEETING AND, SAYING THAT HE
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WAS SPEAKING AT THE REQUEST OF JUSTICE MINISTER VOGEL,
INQUIRED WHETHER THE ALLIES HAD ANY INSTRUCTIONS. WE
RESPONDED THAT WE HAD NOT REQUESTED INSTRUCTIONS SINCE
THE FRG HAD PREVIOUSLY MERELY EXPRESSED AN
INTEREST IN THE SUBJECT (REF C) BUT HAD NOT ASKED THAT
THE JUDGES AND PROSECUTORS BE PERMITTED TO CARRY ARMS.
THE ALLIED REPS SAID THAT THE MISSIONS IN BERLIN WERE

AWARE OF AND SENSITIVE TO THE PROBLEM BUT WE GAVE THE FRG NO ENCOURAGEMENT THAT THE ALLIES MIGHT PERMIT THE ARMING OF JUDGES AND PROSECUTORS.

2. THE ALLIED REPS THEN REFERRED TO THE RECENT "SPIEGEL" ARTICLE (REF A) AND SAID THAT STATEMENTS SUCH AS THAT OF BAUMANN WERE NOT HELPFUL, BOTH BECAUSE IT MADE PUBLIC A PROBLEM WHICH WOULD BE BEST KEPT OUT OF THE PRESS AND BECAUSE THE ARTICLE TIED THE REQUEST FOR PERMISSION FOR ARMS TO "RECHTSEINHEIT" (LEGAL UNITY). THE ALLIED REPS SAID THAT SUCH A REFERENCE COULD ONLY COMPLICATE MATTERS AND MAKE POLITICALLY SENSITIVE WHAT WAS OTHERWISE A LEGAL AND PRACTICAL PROBLEM. THE BERLIN REP (MEICHSNER) DENIED THAT THE BASIS OF THE SENAT REQUEST FOR PERMISSION TO CARRY ARMS WAS BECAUSE OF RECHTSEINHEIT AND SAID THAT THE REASON WAS A PRACTICAL ONE. HE ALSO SAID IT WOULD BE HELPFUL IF THE ALLIES COULD INFORM BAUMANN OF THE ALLIED VIEW OF HIS PUBLIC REMARKS, TO WHICH UK REP (EYERS) RESPONDED THAT HE THOUGHT THIS HAD BEEN DONE.

3. WE AGREE WITH USBER THAT THE PROSECUTORS AND JUDGES ARE PROBABLY THE SINGLE MOST ENDANGERED GROUP OF INDIVIDUALS IN BERLIN TODAY AND NOTE THAT ACC ORDER NO. 2 PROVIDES FOR THE ISSUANCE OF ARMS TO AUTHORITIES (PARAGRAPH 2 OF REF B). IT APPEARS TO US THAT THIS MIGHT
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PROVIDE A WAY OUT OF THE PRESENT DILEMMA, I.E. TO PERMIT THIS SMALL GROUP OF PEOPLE TO CARRY ARMS ON THE GROUND THAT THEY ARE OFFICIALS AND THAT THEY ARE PARTICULARLY ENDANGERED. FOR PURPOSES OF CLARIFICATION, WE UNDERSTAND THAT USBER'S POSITION IS UNCHANGED FROM THAT EXPRESSED IN REF B AND THAT THE THIRD SENTENCE OF PARAGRAPH 5 OF REF A REFERS TO OTHER ALLIED OFFICIALS IN BERLIN, NOT TO USBER.

4. THERE SEEM TO BE TWO BASIC HURDLES TO BE OVERCOME BEFORE PERMITTING JUDGES AND PROSECUTORS TO CARRY ARMS: A LEGAL ONE AND A PRACTICAL (CUM POLITICAL) ONE. IN VIEW OF THE TERMS OF THE ACC ORDER, IT WOULD APPEAR THAT THE SMALL GROUP IN QUESTION CAN BE PERMITTED TO CARRY ARMS WITHOUT VIOLATING THE FOUR-POWER LAW ON THE MATTER. THERE IS OF COURSE A SECOND QUESTION, I.E. WHETHER SUCH PERMISSION WOULD VIOLATE THE UNWRITTEN UNDERSTANDING WITH THE SOVIETS (GIVEN AT THE TIME OF THE QUADRIPARTITE AGREEMENT) REGARDING THE DEMILITARIZATION OF BERLIN. WE WOULD APPRECIATE USBER'S VIEWS ON THIS QUESTION.

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ICAE-00 INRE-00 IO-13 ACDA-12 TRSE-00 MCT-01 /076 W
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O 081733Z MAY 78
FM AMEMBASSY BONN
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USMISSION USBERLIN IMMEDIATE

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5. WITH RESPECT TO THE SECOND HURDLE, IF JUDGES AND PROSECUTORS ARE PERMITTED TO CARRY ARMS, IT WILL OF COURSE BECOME MORE DIFFICULT TO RESIST REQUESTS BY OTHERS FOR PERMISSION TO DO SO. WHILE REQUESTS BY NON-OFFICIALS SHOULD BE FAIRLY EASY TO RESIST, ON THE GROUND THAT THE ACC ORDER DOES NOT PERMIT NON-OFFICIALS TO CARRY ARMS, REQUESTS BY OTHER OFFICIALS WOULD BE MORE DIFFICULT. NONETHELESS, IT WOULD SEEM THAT THE ALLIES, BY SETTING UP SOME TYPE OF APPLICATION LICENSING AND REVIEW SYSTEM, COULD FIND THAT OTHERS DID NOT MEET WHATEVER CRITERIA WERE SET UP TO PROVIDE THAT ONLY PARTICULARLY ENDANGERED OFFICIALS WOULD BE GIVEN SUCH PERMISSION. THERE MAY OF COURSE BE, IN TIME, OTHER OFFICIALS WHOM THE ALLIES WOULD CONSIDER PARTICULARLY ENDANGERED AND THESE WOULD PRESUMABLY ALSO BE GIVEN AUTHORITY TO CARRY ARMS. THUS FAR, THE FRG CONSIDERS THE JUDGES, ETC. TO BE UNIQUE (REF C), SO WE CAN PRESUMABLY EXPECT LITTLE FRG INTEREST IN OTHERS' REQUESTS.

6. BOTH WE AND THE BRITISH EMBASSY HERE ARE CONCERNED
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AT THE PRESENT SITUATION. WE HAVE IN THE PAST DISCUSSED THE SUBJECT
TRIPARTITELY AND HAVE THE IMPRESSION, WITHOUT ANY
ASSURANCE, THAT THE FRENCH BONN GROUP REP (RICHARD) MAY
BE MORE AMENABLE TO PERSUASION THAN HIS FRENCH COLLEAGUES
IN BERLIN. IN ANY CASE, SINCE THE FRENCH IN BERLIN ARE
STILL MAINTAINING THEIR SEA ANCHOR FUNCTION, WE BELIEVE
THAT IT WOULD BE USEFUL TO DISCUSS THE SUBJECT
TRIPARTITELY IN BONN IN ORDER TO TEST FRENCH REACTION
HERE. UNLESS USBER STRONGLY DISAGREES, OR THE DEPART-
MENT INSTRUCTS TO THE CONTRARY, WE WILL SEEK TO ARRANGE
A MEETING OF THE ALLIED BONN GROUP REPS LATER THIS WEEK
AT WHICH TIME WE WILL SUGGEST THAT CONSIDERATION BE
GIVEN TO ALLOWING JUDGES AND PROSECUTORS TO BE DEEMED
AUTHORITIES UNDER ACC ORDER NO. 2. WE WILL ALSO
SUGGEST THAT THE ALLIES SET UP A SYSTEM TO PASS JUDGMENT
ON ANY SUCH REQUESTS.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: KIDNAPPING, SMALL ARMS, PHYSICAL SECURITY, JUDGES, TRIALS, THREATS, GUNS (ORDNANCE)
Control Number: n/a
Copy: SINGLE
Draft Date: 08 may 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978BONN08474
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Expiration:
Film Number: D780194-1241
Format: TEL
From: BONN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780584/aaaactse.tel
Line Count: 189
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 7eedb4a2-c288-dd11-92da-001cc4696bcc
Office: ACTION EUR
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 78 USBERLIN 1065, 78 USBERLIN 934, 78 BONN 6169
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 31 may 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2766295
Secure: OPEN
Status: NATIVE
Subject: REQUEST TO PERMIT ARMING OF PROSECUTORS AND JUDGES AT LORENZ KIDNAPPING TRIAL IN BERLIN
TAGS: PGOV, PORS, US, BQG, AKB
To: STATE USBERLIN
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/7eedb4a2-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014